

House Bill 1364 (AS PASSED HOUSE AND SENATE)

By: Representative Rogers of the 26th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide that the Georgia Insurers Insolvency Pool shall be liable to claimants and electing
3 insureds in emergency circumstances; to provide for legislative intent; to provide for
4 definitions; to provide for exceptions to certain provisions relative to the liability of the pool
5 and the filing of claims with the pool; to provide for related matters; to provide an effective
6 date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
10 revising Code Section 33-36-11, relating to the limitation for filing claims, claims filed after
11 the final date set by court, and default judgments, as follows:

12 "33-36-11.

13 (a) Notwithstanding any other provisions of this chapter, except as provided for in Code
14 Section 33-36-20, a covered claim shall not include a claim filed with the pool after the
15 earlier of (i) 18 months after the date of the order of liquidation, or (ii) the final date set by
16 the court for the filing of claims against the liquidator or receiver of an insolvent insurer
17 and shall not include any claim filed with the pool or a liquidator for protection afforded
18 under the insured's policy for ~~incurred-but-not-reported~~ incurred but not reported losses.

19 (b) The pool may not be found in default. No default judgments may be entered against
20 the pool, the insolvent insurer, or the insured of the insolvent insurer after the instigation
21 of an insolvency proceeding prior to an order of liquidation, nor during the pendency of
22 insolvency proceedings, nor during a 120 day stay following an order of liquidation.

23 (c) In no instance may a finding of default or the entry of a default judgment against an
24 insurer be applicable or enforceable against the pool or the insured of the insolvent insurer."

SECTION 2.

Said title is further amended by revising Code Section 33-36-14, relating to exhaustion of rights by claimants against insolvent insurers prior to recovery, recovery of payment to claimants in excess of amounts authorized, reduction of liability of insured, and recovery of amounts paid on behalf of certain persons, as follows:

"33-36-14.

(a) ~~Any~~ Except as provided for in Code Section 33-36-20, any person having a claim against a policy or an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his or her rights under such policy issued by the solvent insurer. The policy of the solvent insurer shall be treated as primary coverage and the policy of the insolvent insurer shall be treated as secondary coverage and his or her rights to recover such claim under this chapter shall be reduced by any amounts received from the solvent insurers.

(b) Any amount paid a claimant in excess of the amount authorized by this chapter may be recovered by an action brought by or on behalf of the pool.

(c) To the extent that the pool's obligation is reduced by the application of this Code section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.

(d) ~~The~~ Except as provided for in Code Section 33-36-20, the pool shall have the right to recover from ~~the following persons~~ any person who is an affiliate of the insolvent insurer all amounts paid by the pool on behalf of such person, whether for indemnity or defense or otherwise:

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds \$25 million; provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and

(2) Any person who is an affiliate of the insolvent insurer."

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"33-36-20.

(a) It is the policy of this state to protect insureds and their claimants from liability as a result of the insolvency of insurers. In furtherance of this policy, it is the intent of the legislature, notwithstanding any provision of law to the contrary, that the Georgia Insurers

Insolvency Pool shall be liable to claimants and electing insureds in emergency circumstances.

(b) As used in this Code section, the term:

(1) 'Electing insured' means any insured under a workers' compensation insurance policy that is impacted by an emergency circumstance. Such term shall include but not be limited to governmental insureds and other insureds under a workers' compensation insurance policy impacted by an emergency circumstance whose net worth exceeds \$25 million as of December 31 of the year preceding the filing of a claim.

(2) 'Emergency circumstance' means a circumstance in which an association or industrial insured captive insurance company, including such a captive company that subsequently was authorized to transact business pursuant to Chapter 3 of this title, that is issuing, or which has issued, workers' compensation insurance contracts and has been declared insolvent.

(3) 'Emergency claimant' means any third-party claimant, under a workers' compensation insurance policy, who is impacted by an emergency circumstance and whose employer has, by a court of competent jurisdiction, been declared bankrupt or insolvent.

(c) Any electing insured whose net worth is less than \$25 million as of December 31 of the year preceding the filing of a claim may be shielded from liability by the pool and have any workers' compensation claims filed against such electing insured covered by the pool, provided said electing insured pays \$10,000.00 per claim to the insolvency pool prior to October 1, 2010. Any electing insured whose net worth exceeds \$25 million as of December 31 of the year preceding the filing of a claim may be shielded from liability by the pool and have any workers' compensation claims filed against such electing insured covered by the pool, provided said electing insured pays \$50,000.00 per claim to the insolvency pool prior to October 1, 2010. Claims of all emergency claimants shall be covered by the insolvency pool.

(d) Claimants shall retain the right to pursue claims against any insured that is not an electing insured."

SECTION 4.

Said title is further amended by revising Code Section 33-41-20.1, relating to the membership of captive insurance companies in Georgia Insurers Insolvency Pool, as follows:
"33-41-20.1.

(a) On and after January 1, 2008, every association and industrial insured captive insurance company issuing workers' compensation insurance contracts shall become a member of the Georgia Insurers Insolvency Pool under Chapter 36 of this title as to workers' compensation only. Such captive insurance companies shall be liable for

96 assessments pursuant to Code Section 33-36-7 and for all other obligations imposed
97 pursuant to Chapter 36 of this title as to workers' compensation only.

98 (b) Except as provided for in Code Section 33-36-20, the ~~The~~ Georgia Insurers Insolvency
99 Pool shall not be liable for any claims incurred by any captive insurance company before
100 January 1, 2008.

101 **SECTION 5.**

102 This Act shall become effective upon its approval by the Governor or upon its becoming law
103 without such approval.

104 **SECTION 6.**

105 All laws and parts of laws in conflict with this Act are repealed.